

Federal Deposit Insurance Corporation

§ 308.541

§ 308.538 Appeal to the Board of Directors.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Board by filing a notice of appeal with the Board in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 308.537 of this subpart has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Board may extend the initial 30-day period for an additional 30 days if the defendant files with the Board a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Board, the ALJ will forward the record of the proceeding to the Board.

(d) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Corporation may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Board.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Board will not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Board that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Board will remand the matter to

the ALJ for consideration of such additional evidence.

(j) The Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Board will promptly serve each party to the appeal with a copy of the decision of the Board and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this subpart and within 60 days after the date on which the Board serves the defendant with a copy of the Board's decision, a determination that a defendant is liable under § 308.502 of this subpart is final and is not subject to judicial review.

§ 308.539 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Board a written finding that continuation of the administrative process described in this subpart with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Board will stay the process immediately. The Board may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 308.540 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Board.

(b) No administrative stay is available following a final decision of the Board.

§ 308.541 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Board imposing penalties or assessments under this subpart and specifies the procedures for such review.